

Message Text

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FM USMISSION GENEVA
TO SECSTATE WASHDC 9573

C O N F I D E N T I A L SECTION 01 OF 04 GENEVA 07324

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE - MAY 9 HIGHLIGHTS

BEGIN SUMMARY: REACTION WAS MIXED TO NJENGA'S PROPOSED TEXTS. THE U.S. STOOD FIRM ON ITS FINANCIAL PROPOSAL IN THE NG-2 KOH EXPERTS GROUP. COMMITTEE II FOCUSED ON THE LEGAL STATUS OF THE EEZ. NG-5 RECEIVED THE CHAIRMAN'S TEXT ON FISHERIES DISPUTES. A STALLED NG-7 EXHAUSTED ITS LIST OF SPEAKERS ON THE SUBSTANTIVE RULES FOR DELIMITATION WITHOUT MAKING PROGRESS. ARAB STATES WERE ACTIVE IN COMMITTEE III. END SUMMARY.

1. NG-1 RECEIVED THE SECOND REPORT OF GROUP OF EXPERTS FROM CHAIRMAN ARCHER (THE WRITTEN REPORT IS TO BE READY MAY 10), AND THE CANADIANS DISTRIBUTED A PAPER (SENT SEPTEL OUTLINING THE SUBSTANCE OF THE US-CANADIAN PROPOSAL ON PRODUCTION LIMITATION. DISCUSSION THEN TURNED TO DOCUMENT NG 1/6: NJENGA'S PROPOSED TEXTS ON ARTICLES 140, 143, 144, 150, 150 BIS, 150 TER, 151, 153 AND ANNEX II PARA 4CII. REACTION WAS GENERALLY TO BALANCE PRAISE FOR NJENGA'S EFFORTS WHILE POINTING OUT DIFFICULTIES. STRONG STATE-
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MENTS AGAINST THE PACKAGE WERE MADE BY PAKISTAN AND NIGERIA

2. THE NG-2 KOH EXPERTS GROUP ON FINANCIAL ARRANGEMENTS MET ALL DAY MAY 9. NORWAY (EVENSEN) PROPOSED TWO PLANS FOR FINANCIAL ARRANGEMENTS BETWEEN CONTRACTORS AND THE AUTHORITY. PLAN A PROVIDED FOR A \$500,000 APPLICATION FEE, A \$1,000,000 ANNUAL FIXED FEE, A PRODUCTION CHARGE ON FINISH-

ED METALS OF 8 PERCENT FOR THE FIRST FIVE YEARS AND 16 PERCENT FOR THE REMAINDER OF THE CONTRACT. PLAN B PROVIDED THE SAME APPLICATION AND FIXED FEE, A 3 PERCENT ROYALTY ON FINISHED METALS FOR THE FIRST FIVE YEARS, 5 PERCENT ROYALTY FOR THE REMAINDER OF THE CONTRACT, SHARING OF 25 PERCENT OF THE TOTAL PROFIT FOR THE FIRST FIVE YEARS AND 40 PERCENT OF TOTAL PROFIT FOR THE REMAINDER OF THE CONTRACT. THE INCOME BASE FROM SEABED MINING WOULD BE DEFINED AS 50 PERCENT OF THE TOTAL INCOME FROM THE PROJECT. THE NORWEGIAN PROPOSAL IS NOT REALISTIC BUT IS CAUSING SEVERE PROBLEMS FOR THE U.S. BECAUSE IT OFFERS THE PROSPECT OF A \$1 BILLION FIGURE (FOR THE AUTHORITY OVER THE LIFE OF A CONTRACT) WHEREAS THE REVISED U.S. PLAN (SENT SEPTTEL) PROVIDES "ONLY" \$300 MILLION FOR THE AUTHORITY DURING THE SAME PERIOD. FURTHERMORE, THE SOVIETS HAD INDICATED TO THE G-77 A WILLINGNESS TO ACCEPT A ROYALTY OF 12 1/2 PERCENT ON THE VALUE OF FINISHED METALS, A PROPOSAL WHICH WOULD PRODUCE \$700,000,000 FOR THE AUTHORITY. THE U.S. HAS STOOD FIRM ON ITS PROPOSAL AND HAS INDICATED THAT IT IS IN A DIFFERENT POSITION FROM THE SOVIETS AND THE NORWEGIANS, NEITHER OF WHICH IS LIKELY TO BECOME A FIRST-GENERATION MINER. THE U.S. ALSO SAID THAT REVENUE SHARING CAN ONLY BE BASED ON THE ACTUAL VALUE ADDED FROM THE MINING SECTOR; AND THAT THE NORTH SEA OIL EXAMPLE FROM WHICH THE NORWEGIAN PROPOSAL IS DRAWN IS NOT APPROPRIATE TO MANGANESE NODULES AND TO THE MUCH MORE RISKY BUSINESS OF SEABED MINING. CONFIDENTIAL

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3. THE JAPANESE PROPOSAL OF MAY 9, MUCH CLOSER TO THE U.S. THAN THE OTHERS MENTIONED ABOVE, IS FOR A 1 PERCENT PRODUCTION CHARGE AND FOR A PROFIT SHARE NOT TO EXCEED 50 PERCENT OF PROFITS PRODUCED FROM THE MINING ACTIVITY ONLY. THE MINING ACTIVITY WOULD BE DEFINED AS 20 PERCENT OF THE TOTAL INCOME FROM THE PROJECT.

4. THERE WAS NO REAL PROGRESS IN NG-3 AND THE MEETING WAS DEVOTED TO PUTTING POSITIONS ON RECORD. THE U.S. REPRESENTATIVE (ALDRICH) MADE A STRONG STATEMENT EMPHASIZING THE REQUIREMENT THAT STATES WHICH WILL BE MAKING THE INVESTMENT AND TAKING THE RISKS MUST BE ABLE TO PREVENT DECISIONS ADVERSE TO THEIR ENORMOUS ECONOMIC INTERESTS AND THAT DECISIONS AFFECTING THESE INTERESTS MUST BE ARRIVED AT ONLY THROUGH NEGOTIATION.

5. COMMITTEE II, TOOK UP THE QUESTION OF THE LEGAL STATUS OF THE EXCLUSIVE ECONOMIC ZONE (EEZ). AN INFORMAL AMENDMENT BY THE USSR WAS THE FOCAL POINT OF DEBATE. THIS PROPOSAL WOULD: (A) DELETE ARTICLE 86 AND (B) ADD A NEW PARAGRAPH TO ARTICLE 55 AS FOLLOWS: "NO STATE MAY VALIDLY PURPORT TO SUBJECT TO ITS SOVEREIGNTY ANY PART OF THE ECONOMIC

ZONE. (THIS PARA DOES NOT ENTAIL ANY ABRIDGEMENT OF THE SOVEREIGN RIGHTS ENJOYED BY COASTAL STATES IN ACCORDANCE WITH ARTICLES 56 AND 77)." A HOST OF STATES ATTACKED THIS AS A SELF-CENTERED PROPOSAL AIMED AT UPSETTING THE BALANCE OF THE LEGAL STATUS REQUIRED AND AN UNAMBIGUOUS ATTEMPT TO ASSIMILATE THE EEZ INTO THE REGIME OF THE HIGH SEAS. ACCEPTANCE OF THE PROPOSAL, SOME STATED, WOULD "TAKE US BACK TO CARACAS" (ROK); "MAKE A LOS TREATY NOT WORTH HAVING" (MEXICO); "OPEN A PANDORA'S BOX IN RESPECT OF MANY OTHER ARTICLES OF THE TEXT" (SOMALIA). THE USSR WAS OPPOSED BY INDIA, ECUADOR, PERU, PRC, ARGENTINA, URUGUAY, MAURITIUS, COLOMBIA, MADAGASCAR, MALAYSIA, BRAZIL, MEXICO, EL SALVADOR, CHILE, PAKISTAN, SOMALIA, ROK, HONDURAS, AND MAURITANIA. PERU SAID IT CONFIDENTIAL

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C O N F I D E N T I A L SECTION 02 OF 04 GENEVA 07324

WAS "SURPRISED" AT THE RENEWAL OF THE USSR STAND WHICH HAD BEEN DECIDEDLY REJECTED AT PREVIOUS SESSIONS. AS A COUNTER-WEIGHT TO THE USSR INITIATIVE, PERU, URUGUAY AND OTHERS WOULD RESUBMIT THEIR OWN PREVIOUS PROPOSALS ON ARTICLES 55 AND 86, WHICH CLEARLY SPELL OUT THE SUI GENERIS CHARACTER OF THE EEZ, I.E., DIFFERENTIATE IT

EXPLICITLY FROM BOTH THE TERRITORIAL SEA AND HIGH SEAS.
THIS COUNTER-STRATEGY WAS SUPPORTED BY MEXICO, MAURITIUS,
AND EL SALVADOR.

6. NOTING THAT IT WOULD CLARIFY THE NATURE OF THE EEZ
AND NOT ALTER ITS LEGAL STATUS THE RUSSIANS WERE SUPPORTED
BY: ITALY, BULGARIA, IRAQ, GDR, UK, CZECHOSLVAKIA, UGANDA,
FRG, NEPAL, HUNGARY, BYELORUSSIA, ISRAEL, POLAND, IRELAND,
ROMANIA, MONGOLIA, UAE, FRANCE, AFGHANISTAN, CAMEROON, AND
GREECE. AUSTRIA ALSO WOULD SUPPORT, BUT WITH A DELETION
OF THE WORD "EXCLUSIVE" FROM THE TITLE OF THE CHAPTER
AND REPOSITION THE AMENDMENT TO ARTICLE 55 IN ARTICLE 3.
THE U.S. (CLINGAN) MADE THE FOLLOWING STATEMENT: "MR.
CHAIRMAN, MY DELEGATION BELIEVES THAT THE ECONOMIC ZONE
ARTICLES REPRESENT A BALANCE PROTECTING THE INTERESTS
OF BOTH THE COASTAL STATES AND OTHER STATES IN THE
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ECONOMIC ZONE. THE BALANCE, OF COURSE, WAS FULLY
CONSIDERED IN COMMITTEE II AND ITS SUBGROUPS AT THE LAST
SESSION. THERE IS ONE ITEM, HOWEVER, THAT MERITS CON-
SIDERATION. THAT IS THE CLAUSE REGARDING NO ASSERTIONS
OF SOVEREIGNTY IN THE ECONOMIC ZONE. THAT PRINCIPLE
COMMANDS OVERWHELMING SUPPORT AT THE CONFERENCE AND IS IN-
CORPORATED IN THE ECONOMIC ZONE BY A CROSS REFERENCE IN
ARTICLE 58, PARAGRAPH 2. AS WE STATED IN NEW YORK, WE
BELIEVE THAT THE PRINCIPLE OF NO SOVEREIGNTY SHOULD
BE INCORPORATED EXPLICITLY IN ARTICLE 55, PARAGRAPH 2, AS
SUGGESTED BY THE SOVIET UNION. MY DELEGATION WOULD NOTE
THAT THIS SUGGESTION INVOLVES NO ALTERATION IN THE LEGAL
MEANING OF THE PRESENT TEXT, BUT IS SUGGESTED ONLY SO
THAT THE PRINCIPLE HAS THE POLITICAL PROMINENCE THAT IT
SO OBVIOUSLY DESERVES."

7. THE PRC REJECTED ARTICLE 55 AS INSUFFICIENTLY REFLECT-
ING THE EXCLUSIVE SOVEREIGNTY AND JURISDICTION OF THE
COASTAL STATE IN THE EEZ. IT WOULD AMEND THE ARTICLE
BY ADDING: "NO FOREIGN COUNTRY SHALL CONSTRUCT ANY
INSTALLATIONS OR CONDUCT ANY MILITARY ACTIVITIES IN THE
EXCLUSIVE ECONOMIC ZONE." THIS SUGGESTION WAS SECONDED
BY: ECUADOR, PERU, AND MADAGASCAR.

8. NG-4 CHAIRMAN NANDAN PRESENTED A REVISED VERSION OF
HIS COMPROMISE (BEING POUCHED TO DEPARTMENT) ON ACCESS BY
LL/GDS TO THE LIVING RESOURCES OF THE EEZ. MODIFICATIONS
WERE MODEST AND REFERRED PRINCIPALLY TO CHANGES IN
ARTICLES 69(3) AND 70(4), AND ARTICLE 70(1), JOINT
VENTURES AND DEFINITION OF GDS RESPECTIVELY. IT WAS
GENERALLY AGREED BY MEMBERS OF BOTH CAMPS THAT THE REVIS-
ION WAS AN IMPROVEMENT OVER THE ORIGINAL AND REPRESENTED
A BASIS FOR FURTHER NEGOTIATIONS, ALTHOUGH THE TWO
POINTS NOTED ABOVE, AS REDRAFTED, STILL PRESENT THE KEY

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ISSUES TO BE RESOLVED. ALL, HOWEVER, ENCOURAGED NANDAN TO CONTINUE HIS EFFORTS.

9. NG-5 CHAIRMAN STAVROPOLOUS INTRODUCED THE COMPROMISE TEXT ON FISHERIES DISPUTES PRODUCED IN HIS SMALL WORKING GROUP.(TEXT FOLLOWS SEPTTEL.) THE CHAIRMAN HOPED THAT IT WOULD OFFER A BASIS FOR CONSENSUS OR AT LEAST FOR A SUBSTANTIALLY IMPROVED PROSPECT OF ONE, AS EVIDENCED BY SUPPORT OF AN OVERWHELMING MAJORITY (I.E., THAT IT WOULD SATISFY THE REQUIREMENTS FOR CHANGING THE ICNT). INDEED, THE PREPONDERANT MAJORITY OF THE EIGHTEEN DELEGATIONS WHICH INTERVENED DID SPEAK FAVORABLY OF THE PROPOSAL, AT LEAST AS A BASIS FOR FURTHER NEGOTIATIONS. THE EXPECTED OBJECTIONS FROM JAPAN AND THE SOVIET UNION WERE SURPRISINGLY MILD AND TENTATIVE IN NATURE. THE LATTER CHOSE IN THE FIRST INSTANCE TO SPEAK THROUGH THE UKRAINIAN SSR AND NONE OF THE OTHER EASTERN EUROPEAN STATES INTERVENED. THESE OBJECTIONS WERE DEALT WITH BY THE US (SOHN), WHICH POINTED OUT THAT THE ICNT, WHILE PROVIDING FOR COMPULSORY COASTAL FISHERIES ADJUDICATION IN GENERAL TERMS, TOOK MOST OR ALL OF IT AWAY WITH BROAD AND AMBIGUOUS EXCEPTIONS. THE CHAIRMAN'S TEXT, WHILE PROVIDING ONLY FOR LIMITED COMPULSORY CONCILIATION IN THE ECONOMIC ZONE, HAS THE ADVANTAGE OF CLARITY AND RELATIVE PRECISION.

10. SWITZERLAND, SPEAKING FOR THE LL/GDS, GAVE THAT GROUP'S BACKING TO THE PROPOSAL. IT INDICATED, HOWEVER, THAT AGREEMENT IN THIS NEGOTIATING GROUP WAS DEPENDENT UPON PROGRESS ON SUBSTANTIVE MATTERS IN OTHER GROUPS (PRESUMABLY NG-4). THIS SENTIMENT WAS ECHOED BY MOST OTHER COUNTRIES, ON ALL SIDES OF THE QUESTION. AS A GROUP, THE COASTAL STATES DID NOT ENDORSE THE TEXT, ALTHOUGH A NUMBER OF CRITICAL MEMBERS GAVE INDIVIDUAL SUPPORT: CHILE, ECUADOR, ICELAND, NORWAY, PAKISTAN, PORTUGAL, PERU, AND

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C O N F I D E N T I A L SECTION 03 OF 04 GENEVA 07324

URUGUAY. THE US DELEGATION WAS TOLD PRIVATELY
THAT COASTAL STATE ACTION ON THE PROPOSAL WAS
FRUSTRATED BY THE STRONG OPPOSITION OF TWO STATES,
INDIA AND NIGERIA.

11. CHAIRMAN MANNER CLOSED DEBATE IN NG-7 ON THE
SUBSTANTIVE RULE FOR DELIMITATION OF MARITIME
BOUNDARIES. AFTER HEARING 45 SPEAKERS ON THIS POINT
OVER A PERIOD OF FOUR DAYS, MANNER NOTED NO MOVEMENT
TOWARD COMPROMISE BY EITHER SIDE. HE ACCUSED THE
DELEGATES OF PUTTING TERMINOLOGY BEFORE SUBSTANCE,
AND OF STICKING TO OLD PROPOSALS RATHER THAN DEVISING
NEW ONES. HE ANNOUNCED THAT ON THE SUBSTANTIVE RULE
HE COULD ONLY REPORT TO PLENARY THAT NEGOTIATIONS WERE
CONTINUING ON THE BASIS OF SEVERAL TEXTS, BUT THAT
THERE WAS NO EVIDENCE OF PROGRESS ON THE CRUCIAL
COMPETING NOTIONS OF EQUITY AND EQUIDISTANCE.

12. TURNING TO THE QUESTION OF THE PROVISIONAL
REGIME, NORWAY (LONG A SUPPORTER OF THE MEDIAN
LINE IN THE ABSENCE OF AGREEMENT) PUT FORWARD A NEW
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PROPOSAL WHICH SEEMED TO REPRESENT A SIGNIFICANT
DEPARTURE. THE NORWEGIAN REP SAID THAT HE COULD
CONSIDER A PARAGRAPH WHICH SPECIFIED: (1) THAT
PROVISIONAL MEASURES DO NOT PREJUDICE FINAL
DELIMITATION; (2) THAT THE PARTIES SHALL EXERCISE

MUTUAL RESTRAINT; AND (3) THAT THE PARTIES SHALL NOT ACT IN A MANNER LIKELY TO IMPEDE THE COMPLETION OF A FINAL ARRANGEMENT. THIS PROPOSAL RECEIVED SUPPORT OR AT LEAST ATTENTIVE CONSIDERATION FROM A NUMBER OF DELEGATIONS ON BOTH SIDES OF THE QUESTION, INCLUDING ARGENTINA, FRANCE, IRELAND, LIBYA, THE REPUBLIC OF KOREA, UNITED ARAB EMIRATES AND THE UNITED KINGDOM.

13. THE THIRD COMMITTEE CHAIRED BY VALLARTA CONSIDERED AN FRG CHANGE TO ARTICLE 227 (TO SPECIFY THAT THE INSPECTION OF FOREIGN VESSELS WHICH ARE SUBJECT TO INVESTIGATION PURSUANT TO ARTICLES 217, 219 AND 221 SHOULD COMMENCE WITH AN EXAMINATION OF CERTIFICATES). FURTHER DISCUSSION WAS DEFERRED PENDING CONSULTATIONS BETWEEN THE FRG AND CUBA ON THE LATTER'S AMENDMENT TO THE GERMAN CHANGE. SEVEN ARAB STATES PROPOSED AMENDING ARTICLE 227 (BY ALLOWING FLAG STATES OR STATES OF REGISTRY TO PROTEST THE CONDITIONING OF RELEASE OF A VESSEL ON ITS PROCEEDING TO THE NEAREST REPAIR YARD). THIS MET WITH CONSIDERABLE OPPOSITION AND THE SPONSORS WERE ADVISED BY THE CHAIRMAN THAT IT WOULD REQUIRE MORE SUPPORT TO BE GIVEN FURTHER CONSIDERATION IN THE COMMITTEE.

14. EIGHTEEN ARAB STATES AND PORTUGAL ADVOCATED AMENDING ARTICLE 236 TO ESTABLISH A SYSTEM FOR CONFIDENTIAL

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LIABILITY TO AND COMPENSATION FOR THE VICTIMS OF DAMAGE CAUSED BY POLLUTION. THIS WAS ACKNOWLEDGED BY ITS SPONSORS, HOWEVER, TO BE TOO COMPLEX TO BE CONSIDERED AT THIS STAGE OF THE NEGOTIATIONS. THE USSR SUGGESTED PUTTING ARTICLES 225, 226, 228, 232, PARAGRAPH 2 OF ARTICLE 231 AND ARTICLE 233 IN A NEW SECTION XIV BIS "GENERAL SAFEGUARDS" WAS RECOGNIZED BY IT'S SPONSOR TO HAVE BEEN MADE TO ADVANCE THE IDEA OF BROADER APPLICABILITY OF THE SAFEGUARDS ARTICLES. THIS ACKNOWLEDGEMENT CAME AFTER A CHALLENGE BY CHINA, CANADA AND NEW ZEALAND (SUPPORT CAME FROM SEVEN OTHER STATES ALBEIT WITH SOME QUALIFICATIONS BY THE NON-SOCIALIST SUPPORTERS).

15. THE SMALLER INFORMAL VALLARTA GROUP ACCEPTED THE FOLLOWING TEXT FOR ARTICLE 212 (2) BIS (WITH A RESERVATION BY INDIA):

"ARTICLE 212 (2) BIS OR NEW ARTICLE -- PORT ENTRY REQUIREMENTS

1. STATES WHICH ESTABLISH PARTICULAR REQUIREMENTS FOR THE PREVENTION, REDUCTION AND CONTROL OF POLLUTION OF THE MARINE ENVIRONMENT AS A CONDITION FOR THE ENTRY OF FOREIGN VESSELS INTO THEIR PORTS OR INTERNAL WATERS OR A CALL AT THEIR OFF-SHORE TERMINALS SHALL GIVE DUE PUBLICITY TO SUCH REQUIREMENTS AND SHALL COMMUNICATE THEM TO THE COMPETENT INTERNATIONAL ORGANIZATION.

2. WHENEVER SUCH REQUIREMENTS ARE ESTABLISHED IN IDENTICAL FORM BY TWO OR MORE COASTAL STATES IN AN ENDEAVOR TO HARMONIZE POLICY, THE COMMUNICATION SHALL INDICATE WHICH STATES ARE PARTICIPATING IN SUCH COOPERATIVE ARRANGEMENTS.

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3. EVERY STATE SHALL REQUIRE THE MASTER OF A VESSEL FLYING ITS FLAG OR OF ITS REGISTRY, WHEN NAVIGATING WITHIN THE TERRITORIAL SEA OF A STATE PARTICIPATING IN SUCH COOPERATIVE ARRANGEMENTS, TO FURNISH, UPON THE REQUEST OF THAT STATE, INFORMATION AS TO WHETHER IT IS PROCEEDING TO A STATE OF THE REGION PARTICIPATING IN SUCH COOPERATIVE ARRANGEMENTS AND, IF SO, TO INDICATE WHETHER IT COMPLIES WITH THE PORT ENTRY REQUIREMENTS OF THAT STATE.

4. THE PROVISIONS OF THIS ARTICLE SHALL BE WITHOUT PREJUDICE TO THE CONTINUED EXERCISE BY A VESSEL OF ITS RIGHT TO INNOCENT PASSAGE OR TO THE APPLICATION OF PARAGRAPH 2 OF ARTICLE 25."

16. EFFORTS TO OBTAIN ACCEPTANCE OF A COMPROMISE
TEXT FOR ARTICLE 231 (WHICH WOULD HAVE ALLOWED OTHER
THAN MONETARY PENALTIES FOR CASES INVOLVING "WILLFUL
AND SERIOUS ACTS OF POLLUTION IN THE TERRITORIAL
SEA"), FLOUNDERED WHEN CANADA INSISTED ON DELETION
OF "WILLFUL" AND TANZANIA OBJECTED TO ANY CHANGE THAT
DID NOT RECOGNIZE UNLIMITED COASTAL STATE AUTHORITY
THROUGHOUT THE TERRITORIAL SEA AND INTERNAL WATERS.
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A COMPROMISE TEXT FOR ARTICLE 221 (6) WAS HELD UP
BY A DISPUTE OVER THE SUBSTITUTION OF "CLEAR
OBJECTIVE EVIDENCE" FOR THE EXISTING REFERENCE TO
"FLAGRANT AND GROSS VIOLATION" WITH TANZANIA
AGAIN OBJECTING. RICHARDSON

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